IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL WRIT No. 1487 of 2006

MUMTAZ KHAN
V/S
CIVIL JUDGE (S.D.) BHADRA & ANR.

Mr. BK VYAS, for the appellant / petitioner

Mr. RS CHOUDHARY for Mr. GR PUNIA (CAVEATOR), for the respondent

Date of Order : 24.9.2007

HON'BLE SHRI N P GUPTA,J.

ORDER

Heard learned counsel for the parties.

By the impugned order, the learned trial Court has dismissed the application filed under Order 6 Rule 17 seeking to plead that now since the Rajasthan Rent Control Act, 2001 has become applicable, therefore, the suit as filed is required to be dismissed as not maintainable.

Learned trial Court has found, that the suit has been filed under the Transfer of Property Act, and with promulgation of Rent Control Act, 2001, old Rajasthan Premises (Control of Rent and Eviction) Act has been repealed, and even if it is assumed that new Rent Control Act has been applied to the Municipal area, still the suit as originally filed, is to be decided only on the basis of Transfer of Property Act, and the provisions of the Rent

Control Act, 2001 cannot apply, as by repealing the old Act, the provisions of new Act are not attracted.

May be that the reasoning given by the learned trial Court may not be sustainable, as, if the new Rent Control Act applies, the non-obstante clause incorporated in Section 9 does apply, but then, here the thing is, that the new Rent Control Act has not been made applicable to Bhadra.

Much was sought to be argued, that there has been amendment in the new Rent Control Act, 2001, being Rajasthan Rent Control (Second Amendment) Act, 2005, whereby in sub-section (2) of Section 1, the expression "having a population exceeding fifty thousand as per 1991 Census" has been deleted, and this amendment has been brought into effect vide notification dated 20.2.2006, with immediate effect, and therefore, since the requirement of fifty thousand population has been deleted, the Rent Control Act, 2001 obviously becomes applicable to the Bhadra municipal area as well.

I am afraid that that is not correct interpretation of the provisions of Section 1(2).

For ready reference, I may quote the provisions of sub-section (2) of Section 1 of the Act of 2001, which read

as under:

> "(2) It shall extend in first instance to such of the municipal areas which are comprising the District Headquarters in the State and later on to such of the other municipal areas having a population exceeding fifty thousand as per 1991 Census as the State Government may, by notification in the Official Gazette, specify from time to time."

From out of the above provision, after deletion of the words deleted by Second Amendment Act, the remaining part of sub-section (2) would read as under:

> "(2) It shall extend in first instance to such of the municipal areas which are comprising the District Headquarters in the State and later on to such of the other municipal areas as the State Government may, by notification in the Official Gazette, specify from time to time."

In my view, thus, on the reading of the consequently amended sub-section (2) also, it cannot be said that the Act is applicable to the municipal area of Bhadra, in absence of any notification, published in Official Gazette, specifying the Act to have become applicable to this area. In that view of the matter, though for different reason, I do not find any sufficient ground to interfere with the impugned order.

The writ petition is, therefore, dismissed summarily.

(N P GUPTA),J.

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